IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 180 of 1993
with
INCOME TAX REFERENCE No 183 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH
and
Hon'ble MR.JUSTICE D.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

COMMISSIONER OF INCOME TAX

Versus

CHINUBHAI BHIKHABHAI (HUF)

Appearance:

1. INCOME TAX REFERENCE No. 180 of 1993
MR BB NAIK with MR MANISH R BHATT for Petitioner No. 1
MR SN SOPARKAR with MR KAJI for Respondent No. 1

2. INCOME TAX REFERENCE No. 183 of 1993
MR BB NAIK with MR MANISH R BHATT for Petitioner No. 1
MR SN SOPARKAR with MR KAJI for Respondent No. 1

CORAM : MR.JUSTICE M.S.SHAH
and
MR.JUSTICE D.A.MEHTA

Date of decision: 20/09/2001

COMMON ORAL JUDGEMENT

(Per : MR.JUSTICE M.S.SHAH)

In Income-tax Reference No. 180 of 1993 at the instance of the revenue, the following question is referred for the opinion of this Court in respect of assessment year 1982-83 :-

"Whether, the Appellate Tribunal is right in law and on facts in directing the ITO to work out the amount of capital gains on the basis that the averaging is to be done for the purpose of determining the cost of bonus shares and that did not in any way affect or reduce the cost of the original shares ?"

2. In Income-tax Reference No. 183 of 1993 at the instance of the revenue, the following question is referred for the opinion of this Court in respect of assessment year 1982-83 :-

"Whether, on the facts and in the circumstances of the case the Appellate Tribunal was right in law in holding that in computation of capital gains on sale of original as well as bonus shares, the cost of acquisition of original shares would be the cost for which the assessee acquired the shares and the cost of acquisition of bonus shares should be worked out by the process of averaging i.e. by spreading the cost of original shares to the assessee over the cost of the original shares and bonus taken together when the bonus shares ranked pari passu ?"

3. We have heard Mr BB Naik, learned counsel for the revenue and Mr SN Soparkar with Mr Kaji, learned counsel for the respondent-assessees. Both the learned counsel state that the controversy raised in both the references is concluded in favour of the revenue by the Supreme Court in Escorts Farms (Ramgarh) Ltd. vs. CIT, (1996) 222 ITR 509.

4. The Supreme Court has laid down the following principles :-

"When bonus shares are issued by a Company, it has its impact on the original shares. The market value of the Company's shares may get reduced to a figure nearer their nominal value. The value of the original shares acquired gets automatically reduced, notwithstanding the fact

> that the total holding of the shareholder may be larger. Where bonus shares are issued in respect of ordinary shares held in a Company by an assessee who is a dealer in shares, their real cost to the assessee cannot be taken to be nil or their face value. They have to be valued by spreading the cost of the old shares over the old shares and the new issue (viz. the bonus shares) taken together if they rank pari passu and if they do not, the price may have to be adjusted either in proportion of the face value they bear (if there is no other circumstance to differentiate them) or an equitable considerations based on the market price before and after issue. There is no "dichotomy", as to whether the shares are held by an "investor" or "dealer" in shares. In both the cases, it is the surplus receipt that is brought to tax, either as "capital gains" or "profit or loss", as the case may be, and in accordance with the relevant statutory provisions."

In view of the aforesaid principles laid down by the Apex Court in the aforesaid decision, our answer to the question is partly in the affirmative in so far as the formula laid down by the Tribunal for determining the cost of bonus shares is concerned, but as far as the formula applied by the Tribunal to determine the cost of original shares is concerned, our answer is in the negative i.e. in favour of the revenue and against the assessee.

5. The references accordingly stand disposed of with no order as to costs.

(M.S. Shah, J.)

(D.A. Mehta, J.)

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